

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Antonio Deshun Harper,

Case No.: 2:22-cv-00068-JAD-BNW

Petitioner

**Order Dismissing Habeas Petition without
Prejudice and Closing Case**

v.

Sheriff Joseph Lambardo, et al.,

[ECF No. 1-1]

Respondents

Pro se petitioner Antonio Deshun Harper filed this petition for writ of habeas corpus under 28 U.S.C. § 2241, seeking emergency federal review related to his ongoing state criminal case and pretrial detention.¹ On initial review under the Habeas Rules,² I find that Harper's claims are unexhausted and that federal abstention is required, so I dismiss his petition without prejudice.

Background³

Harper is a pretrial detainee in the Clark County Detention Center. He insists that he was illegally arrested without an arrest warrant. Harper attaches the declaration of arrest to his petition, in which the arresting officer relates that he pulled Harper over for a traffic stop.⁴ A records check led the officer to contact a detective on the force, who relayed the probable cause to arrest Harper in relation to a shooting that occurred about a month earlier. Harper argues that

¹ ECF No. 1-1.

² All references to a "Habeas Rule" or the "Habeas Rules" in this order identify the Rules Governing Section 2254 Cases in the United States District Courts.

³ The procedural history in this section is derived from Harper's allegations as well as his criminal matter in the Eighth Judicial District Court for Clark County. I take judicial notice of the online docket records of the state district court, which may be accessed by the public online at: <https://www.clarkcountycourts.us/Anonymous/default.aspx>.

⁴ ECF No. 1-1, p. 34.

1 he has been kidnapped and falsely imprisoned and that his Fourth and Fourteenth Amendment
2 rights have been violated.

3 Discussion

4 Habeas Rule 4 requires federal district courts to examine a habeas petition and order a
5 response unless it “plainly appears” that the petitioner is not entitled to relief. This rule allows
6 courts to screen and dismiss petitions that are patently frivolous, vague, conclusory, palpably
7 incredible, false,⁵ or plagued by procedural defects.⁶ Because a federal habeas petitioner
8 incarcerated by a state must give state courts a fair opportunity to act on each of his claims
9 before he presents them in a federal habeas petition, federal courts will not consider his petition
10 for habeas relief until he has properly exhausted his available state remedies for all claims
11 raised.⁷

12 A claim remains unexhausted until the petitioner has given the highest available state
13 court the opportunity to consider the claim through direct appeal or state collateral-review
14 proceedings.⁸ To properly exhaust state remedies on each claim, the habeas petitioner must
15 “present the state courts with the same claim he urges upon the federal court.”⁹ The federal
16 constitutional implications of a claim, not just issues of state law, must have been raised in the
17 state court to achieve exhaustion.¹⁰ A claim is not exhausted unless the petitioner has presented

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19 ⁵ See *Valdez v. Montgomery*, 918 F.3d 687, 693 (9th Cir. 2019).

20 ⁶ *Hendricks v. Vasquez*, 908 F.2d 490, 491 (9th Cir. 1990) (collecting cases).

21 ⁷ See *Boyd v. Thompson*, 147 F.3d 1124, 1128 (9th Cir. 1998).

22 ⁸ *O’Sullivan v. Boerckel*, 526 U.S. 838, 844–45 (1999); *Peterson v. Lampert*, 319 F.3d 1153,
1158 (9th Cir. 2003) (en banc).

23 ⁹ *Picard v. Connor*, 404 U.S. 270, 276 (1971).

¹⁰ *Woods v. Sinclair*, 764 F.3d 1109, 1129 (9th Cir. 2014); *Castillo v. McFadden*, 399 F.3d 993,
999 (9th Cir. 2005) (fair presentation requires both the operative facts and federal legal theory
upon which a claim is based).

1 to the state court the same operative facts and legal theory upon which his federal claim is
 2 based.¹¹ While Harper has filed inmate grievances with the Las Vegas Metropolitan Police
 3 Department, his petition reflects that he has not exhausted any of the claims he asserts here in the
 4 state courts. This alone bars this court’s consideration of his federal habeas petition.

5 Even if I assume that Harper has exhausted his claims, his petition seeks federal judicial
 6 intervention in a pending state criminal proceeding—which is simply not available to him.¹²
 7 The comity-based *Younger* abstention doctrine prevents federal courts from enjoining pending
 8 state court criminal proceedings, even if there is an allegation of a constitutional violation, unless
 9 there is an extraordinary circumstance that creates a threat of irreparable injury.¹³ The United
 10 States Supreme Court has instructed that “federal-court abstention is *required*” when there is “a
 11 parallel, pending state criminal proceeding.”¹⁴ Injuries are only irreparable if the threat to a
 12 petitioner’s federally protected rights cannot be eliminated through his defense of the criminal
 13 case.¹⁵

14 This case does not present extraordinary circumstances. Defendants in state criminal
 15 proceedings routinely allege that some aspect of their arrest, detention, or prosecution violates
 16 their constitutional rights, which makes this a regular occurrence, not an extraordinary
 17 circumstance. In addition, motions or other developments in Harper’s still-pending criminal
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19 ¹¹ *Bland v. California Dep’t of Corrections*, 20 F.3d 1469, 1473 (9th Cir. 1994).

20 ¹² *Cf. e.g., Sherwood v. Tomkins*, 716 F.2d 632, 634 (9th Cir. 1983); *Carden v. Montana*, 626
 21 F.2d 82, 83–85 (9th Cir. 1980).

22 ¹³ *Younger v. Harris*, 401 U.S. 37, 53–54 (1971).

23 ¹⁴ *Sprint Commc’ns, Inc. v. Jacobs*, 571 U.S. 69, 72 (2013) (emphasis added); *Gilbertson v. Albright*, 381 F.3d 965 (9th Cir. 2004) (federal courts generally abstain from granting any relief that would interfere with pending state judicial proceedings).

¹⁵ *Younger*, 401 U.S. at 46.

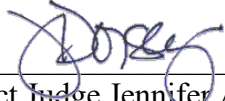
1 matter, *State of Nevada v. Antonio Harper*, C-21-359905-1, may ameliorate any threat to his
 2 federally protected rights. He thus faces no extraordinary or irreparable injuries, so federal
 3 abstention is required. And because the charges against Harper are still pending, dismissal of
 4 this action without prejudice will not materially impact the analysis of any issue in a later-filed
 5 habeas proceeding or otherwise result in substantial prejudice.

6 **Conclusion**

7 IT IS THEREFORE ORDERED that Antonio Deshun Harper's petition for writ of
 8 habeas corpus [ECF No. 1-1] is **DISMISSED without prejudice**.

9 IT IS FURTHER ORDERED that the Clerk of the Court is directed to:

- 10 • **DIRECT INFORMAL ELECTRONIC SERVICE** upon respondents under
 11 Rule 4 of the Rules Governing Section 2254 Cases by adding Nevada Attorney
 12 General Aaron D. Ford as counsel for respondents and sending a notice of
 13 electronic filing to his office for the petition [ECF No. 1-1] and this order. No
 14 response is required from respondents other than to respond to any orders of a
 15 reviewing court.
- 16 • **ENTER FINAL JUDGMENT** dismissing this action and **CLOSE THIS**
 17 **CASE**.

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 19 U.S. District Judge Jennifer A. Dorsey
 20 February 25, 2022
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